



# House of Representatives

General Assembly

**File No. 352**

January Session, 2001

House Bill No. 6573

*House of Representatives, April 18, 2001*

The Committee on Public Health reported through REP. EBERLE of the 15th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER SUPERVISION OF THE COMMISSIONER OF MENTAL RETARDATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 17a-238 of the general statutes is repealed and the following  
2 is substituted in lieu thereof:

3 (a) No person placed or treated under the direction of the  
4 Commissioner of Mental Retardation in any public or private facility  
5 shall be deprived of any personal, property or civil rights, except in  
6 accordance with due process of law.

7 (b) Each person placed or treated under the direction of the  
8 Commissioner of Mental Retardation in any public or private facility  
9 shall be protected from harm and receive humane and dignified  
10 treatment which is adequate for [his] such person's needs and for [his]  
11 the development [to his] of such person's full potential at all times,  
12 with full respect for [his] such person's personal dignity and right to

13 privacy consistent with [his] such person's treatment plan as  
14 determined by the commissioner. No treatment plan or course of  
15 treatment for any person placed or treated under the direction of the  
16 commissioner shall include the use of an aversive device which has not  
17 been tested for safety and efficacy and approved by the federal Food  
18 and Drug Administration except for any treatment plan or course of  
19 treatment including the use of such devices which was initiated prior  
20 to October 1, 1993. No treatment plan or course of treatment prescribed  
21 for any person placed or treated under the direction of the  
22 commissioner shall include the use of aversive procedures except in  
23 accordance with procedures established by the Commissioner of  
24 Mental Retardation. For purposes of this subsection, "aversive  
25 procedure" means the contingent use of an event which may be  
26 unpleasant, noxious or otherwise cause discomfort to alter the  
27 occurrence of a specific behavior or to protect an individual from  
28 injuring himself or herself or others and may include the use of  
29 physical isolation and mechanical and physical restraint. Nothing in  
30 this subsection shall prohibit persons who are not placed or treated  
31 under the direction of the Commissioner of Mental Retardation from  
32 independently pursuing and obtaining any treatment plan or course of  
33 treatment as may otherwise be authorized by law. The commissioner  
34 shall adopt regulations, in accordance with chapter 54, to carry out the  
35 provisions of this subsection.

36 (c) The Commissioner of Mental Retardation shall adopt  
37 regulations, in accordance with the provisions of [sections 4-166 to 4-  
38 176, inclusive] chapter 54, with respect to each facility or institution  
39 under [his] the jurisdiction of the commissioner, with regard to the  
40 following: (1) Prohibiting the use of corporal punishment; (2) when  
41 and by whom therapies may be used; (3) which therapies may be used;  
42 and (4) when a person may be placed in restraint or seclusion or when  
43 force may be used upon a person.

44 (d) A copy of any order prescribing the use of therapy, restraint or

45 seclusion in accordance with the regulations adopted [in] under  
46 subsection (c) of this section shall be made a part of the person's  
47 permanent clinical record together with the reasons for each such  
48 order and made available in compliance with existing statutes relating  
49 to the right to know.

50 (e) The Commissioner of Mental Retardation shall ensure that each  
51 person placed or treated under [his] the commissioner's direction in  
52 any public or private facility is afforded the following rights and  
53 privileges: (1) The right to prompt, sufficient and appropriate medical  
54 and dental treatment; (2) the right to communicate freely and privately  
55 with any person, including, but not limited to, an attorney or other  
56 legal representative of [his] the person's choosing; (3) the right to  
57 reasonable access to a telephone, both to make and receive calls in  
58 private, unless such access is used in violation of any federal or state  
59 statute; (4) the right to send and receive unopened mail and to make  
60 reasonable requests for assistance in the preparation of  
61 correspondence; (5) the safety of each person's personal effects shall be  
62 assured including the provision of reasonably accessible individual  
63 storage space; (6) the right to be free from unnecessary or excessive  
64 physical restraint; (7) the right to voice grievances without  
65 interference; (8) the right to a nourishing and well-balanced diet; (9)  
66 the right to be employed outside a facility and to receive assistance in  
67 his or her efforts to secure suitable employment. The department shall  
68 encourage the employment of such persons and shall promote the  
69 training of such persons for gainful employment, and all benefits of  
70 such employment shall accrue solely to the person employed; (10) the  
71 right to have the complete record maintained by the Department of  
72 Mental Retardation concerning such person released for review,  
73 inspection and copying to such person's attorney or other legal  
74 representative notwithstanding any provisions of subsection (g) of  
75 section 4-193 or section 4-194; and (11) the right to receive or purchase  
76 his or her own clothing and personal effects, including toilet articles,  
77 and the right to wear such clothing and use such personal effects

78 except where determined to be dangerous to the health or safety of the  
79 individual or others.

80 (f) The Commissioner of Mental Retardation shall require the  
81 attending physician of any person placed or treated under [his] the  
82 direction of the commissioner to obtain informed written consent from  
83 the following persons prior to authorizing any surgical procedure or  
84 any medical treatment, excluding routine medical treatment which is  
85 necessary to maintain the general health of a resident or to prevent the  
86 spread of any communicable disease: (1) The resident if [he] such  
87 resident is eighteen years of age or over or is legally emancipated and  
88 competent to give such consent; (2) the parent of a resident under  
89 eighteen years of age who is not legally emancipated; or (3) the legal  
90 guardian or conservator of a resident of any age who is adjudicated  
91 unable to make informed decisions about matters relating to [his] such  
92 resident's medical care. The person whose consent is required shall be  
93 informed of the nature and consequences of the particular treatment or  
94 surgical procedure, the reasonable risks, benefits and purpose of such  
95 treatment or surgical procedure and any alternative treatment or  
96 surgical procedures which are available. The consent of any resident or  
97 of any parent, guardian or conservator of any resident may be  
98 withdrawn at any time prior to the commencement of the treatment or  
99 surgical procedure. The regional or training school director having  
100 custody and control of a resident of any facility may authorize  
101 necessary surgery for [any] such resident where, in the opinion of the  
102 resident's attending physician, the surgery is of an emergency nature  
103 and there is insufficient time to obtain the required written consent  
104 provided for in this section. The attending physician shall prepare a  
105 report describing the nature of the emergency which necessitated such  
106 surgery and shall file a copy of such report in the patient's record.

107 (g) The commissioner's oversight and monitoring of the medical  
108 care of persons placed or treated under the direction of the  
109 commissioner does not include the authority to make treatment

110 decisions, except in limited circumstances in accordance with statutory  
111 procedures. In the exercise of such oversight and monitoring  
112 responsibilities, the commissioner shall not impede or seek to impede a  
113 properly executed medical order to withhold cardiopulmonary  
114 resuscitation. For purposes of this subsection, [a] "properly executed  
115 medical order to withhold cardiopulmonary resuscitation" means (1) a  
116 written order by the attending physician; (2) in consultation and with  
117 the consent of the patient or a person authorized by law; (3) when the  
118 attending physician is of the opinion that the patient is in a terminal  
119 condition, as defined in subsection (3) of section 19a-570, which  
120 condition will result in death within days or weeks; and (4) when such  
121 physician has requested and obtained a second opinion from a  
122 Connecticut licensed physician in the appropriate specialty that  
123 confirms the patient's terminal condition; [ . A "properly executed  
124 medical order to withhold cardiopulmonary resuscitation" also] and  
125 includes the entry of such an order when the attending physician is of  
126 the opinion that the patient is in the final stage of a terminal condition  
127 but cannot state that the patient may be expected to expire during the  
128 next several days or weeks, or, in consultation with a physician  
129 qualified to make a neurological diagnosis, deems the patient to be  
130 permanently unconscious, provided the commissioner has reviewed  
131 the decision with the department's director of community medical  
132 services, the family and guardian of the patient and others who the  
133 commissioner deems appropriate, and determines that the order is a  
134 medically acceptable decision.

135 (h) Any person applying for services from the Commissioner of  
136 Mental Retardation or any person placed by a probate court under the  
137 direction of the Commissioner of Mental Retardation, and such  
138 person's parents or guardian, shall be informed orally and in writing at  
139 the time of application or placement of the rights guaranteed by this  
140 section and the provisions of subdivision (5) of section 46a-11. A  
141 summary of [these] such rights shall be posted conspicuously in the  
142 public areas of every public or private facility providing services to

143 persons under the care of the Commissioner of Mental Retardation.

**PH**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Affected Agencies:** Department of Mental Retardation

**Municipal Impact:** None

**Explanation****State Impact:**

This bill clarifies current practice by providing a regional or training school director the authority to consent to necessary emergency surgery on behalf of a client. In addition, this bill makes technical changes. As a result of these changes the department will incur no cost.

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**OLR Bill Analysis**

HB 6573

***AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER SUPERVISION OF THE COMMISSIONER OF MENTAL RETARDATION.***

**SUMMARY:**

This bill authorizes the regional or training school director who has custody and control of a resident of a Department of Mental Retardation facility to consent to necessary emergency surgery on behalf of the client. This applies when there is not enough time to obtain consent from the resident, his parent, or guardian. The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2001

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Report  
Yea 24 Nay 0